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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

DONALD KOTTLER et al., Plaintiffs and Appellants, v. CITY OF LOS ANGELES, Defendant and Appellant.	B278276 (Los Angeles County Super. Ct. No. BS 154184)

APPEAL from an order of the Superior Court of Los Angeles County, Robert H. O'Brien and Amy D. Hogue, Judges. Affirmed.

Angel Law, Frank P. Angel, and Ellis Raskin for Plaintiffs and Appellants Donald and Marlene Kottler.

Michael N. Feuer, City Attorney, Terry Kaufmann Macias, Assistant City Attorney, Amy Brothers and Ernesto Velazquez, Deputy City Attorneys, for Defendant and Appellant City of Los Angeles.

Real party in interest Michael Sourapas applied for a zoning adjustment from defendant and appellant the City of Los Angeles (the City) to allow him to expand his home beyond the maximum size allowed under the City's zoning laws. The City granted the adjustment, and plaintiffs and respondents Donald and Marlene Kottler, who live next door to Sourapas, filed a petition for a writ of administrative mandate (see Code Civ. Proc., § 1094.5) to block the expansion.

The trial court issued the writ of mandate on the ground that the zoning administrator acted improperly by granting Sourapas the zoning *adjustment* without applying the more stringent requirements for a zoning *variance* established in the Los Angeles Charter. The Kottlers also contended below, as they do here, that there was no substantial evidence to support the zoning administrator's finding even under the less stringent requirements in the Los Angeles Municipal Code for a zoning adjustment.[1] We agree and affirm the trial court's order on this basis.[2] We also affirm the trial court's denial of the Kottlers' request for declaratory relief, and we reject the Kottlers' challenge regarding attorney fees and costs.

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[1] The Kottlers contend that the City's appeal is moot because Sourapas has filed new plans for the renovation of his home that would not require a zoning adjustment. We disagree. First, we denied judicial notice of those new plans. In any case, Sourapas may have filed the new plans simply as a fallback position, and may prefer to proceed with his original plans if he can obtain a zoning adjustment.

[2] Because we decide the case on this basis, we need not decide whether a zoning administrator may grant a zoning *adjustment* without finding all facts required for a zoning *variance*.

FACTS AND PROCEEDINGS BELOW

Sourapas and the Kottlers live next door to one another in the Hancock Park neighborhood of Los Angeles. Sourapas's house currently has a residential floor area (RFA)[3] of 8,340 square feet on a lot of approximately 22,000 square feet. Sourapas sought to remodel the house and expand its RFA to 10,138 square feet, which is more than the maximum allowed for that size lot under applicable zoning law.

In order to build in excess of the allowed RFA for the lot, Sourapas applied for a zoning adjustment from the City. The Los Angeles Municipal Code permits homeowners to obtain zoning adjustments for construction of up to 10 percent in excess of maximum RFA for a property. (See L.A. Mun. Code, § 12.28.) More substantial deviations require a zoning variance, which is subject to more stringent requirements. (See L.A. Charter, § 562; L.A. Mun. Code, §§ 12.27, 12.28.) Sourapas claimed in his application for a zoning adjustment that, based on the lot size and the manner of the home's construction, he could build up to a maximum RFA of 9,225 square feet by right.[4] A zoning adjustment would allow a 10 percent increase over the base RFA, up to a total of 10,147 square feet. Sourapas's proposed new RFA of 10,138 would be just within the limit for a zoning adjustment.

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[3] RFA is a measurement of the interior area of a building with certain adjustments as defined in Los Angeles Municipal Code section 12.03.

[4] We assume, for the purposes of this opinion, but do not decide, that Sourapas was entitled to a 20 percent RFA bonus based on the manner of his home's construction (see L.A. Mun. Code, § 12.07.01, subd. (C)(5)), which increased the maximum RFA for the property from 7,688 to 9,225 square feet.

The Kottlers objected to Sourapas's application. They were concerned that the new construction on Sourapas's property would block their sunlight and invade their privacy by expanding the second floor to overlook their back yard. After a hearing, the City's zoning administrator granted Sourapas the adjustment. The Kottlers appealed to the Central Los Angeles Area Planning Commission, which adopted the zoning administrator's findings and affirmed the decision.

In February 2015, the Kottlers filed a petition for a writ of administrative mandate and a complaint for declaratory relief in the trial court. In May 2016, they filed the operative first amended petition and complaint, which alleged six causes of action. The Kottlers sought a writ of mandate to overturn the City's decision to grant the adjustment, and they also sought declaratory relief to bar the City from granting zoning adjustments without following all requirements under the City's Charter for zoning variances.

The trial court granted the petition for writ of mandate, but denied declaratory relief.

DISCUSSION

I. Standard of Review

Because this case involves the review of a final administrative order or decision, our review is governed by Code of Civil Procedure section 1094.5. Review "extend[s] to the questions whether the respondent has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." (Code Civ. Proc., § 1094.5, subd. (b).) Where, as here, an administrative decision "does not involve, or substantially affect, any fundamental vested

right, the trial court must still review the entire administrative record to determine whether the findings are supported by substantial evidence and whether the agency committed any errors of law." (*Bixby v. Pierno* (1971) 4 Cal.3d 130, 144; see *Strumsky v. San Diego County Employees Retirement Assn.* (1974) 11 Cal.3d 28, 32 [holding that the standard applies equally to review of local and statewide agencies].) "On appeal, we review the administrative decision itself (not the decision of the trial court) to determine if it is supported by substantial evidence." (*Mohilef v. Janovici* (1996) 51 Cal.App.4th 267, 306.) When review "involves only an issue of law, then we apply our independent judgment." (*Stermer v. Board of Dental Examiners* (2002) 95 Cal.App.4th 128, 132.)

II. Substantial Evidence for Zoning Adjustment

The Kottlers contend that there was insufficient evidence to support the City's decision to grant Sourapas a zoning adjustment, and we agree.[5] Under the substantial evidence standard that applies here, we " 'may reverse an agency's decision only if, *based on the evidence before the agency,* a reasonable person could not reach the conclusion reached by the agency.' " (*Sierra Club v. California Coastal Com.* (1993) 12 Cal.App.4th 602, 610.)
In this case, there was no substantial evidence to support the zoning administrator's finding that the requirement established in Los Angeles Municipal Code section 12.28, subdivision (C)(4)(a) for a zoning adjustment was met.

Under section 12.28 of the Los Angeles Municipal Code, a zoning adjustment may be granted only if it complies with three requirements:

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[5] Sourapas did not apply for a variance, which, in any case, has stricter requirements than an adjustment.

"(a) that while site characteristics or existing improvements make strict adherence to the zoning regulations impractical or infeasible, the project nonetheless conforms with the intent of those regulations;

"(b) that in light of the project as a whole, including any mitigation measures imposed, the project's location, size, height, operations and other significant features will be compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood, or the public health, welfare, and safety; and

"(c) that the project is in substantial conformance with the purpose, intent and provisions of the General Plan, the applicable community plan and any applicable specific plan." (L.A. Mun. Code, § 12.28, subd. (C)(4).)

All three conditions must be met. Here, however, there was no evidence, let alone substantial evidence, to support the zoning administrator's finding that it would be "impractical or infeasible" (L.A. Mun. Code, § 12.28, subd. (C)(4)(a)) for Sourapas to modernize his home without exceeding the maximum RFA allowed for the size of the lot. Sourapas described his project as an attempt to modernize a home whose layout had not been significantly updated since its construction 83 years ago. Sourapas described the changes he planned to make to the home's layout: He planned to expand the kitchen from 219 to 577 square feet, to build a master bedroom suite in the rear of the house to replace a smaller existing master bedroom in the front, and to relocate one study and build a second study. These proposed changes, however, would affect only a fraction of the home's area, and the record does not show why Sourapas could not repurpose existing parts of the home to allow for the changes to the kitchen, bedrooms, and study within the maximum RFA for his size lot. Nor is it clear that all of the changes are necessary in order to modernize the home. Sourapas also

claimed that 788 square feet of the home's existing RFA consisted of an outdoor porte-cochere and loggia that could not be changed. These architectural features may have made the house's usable indoor space smaller than its RFA would indicate, but they do not show that it would be impractical to renovate the house without expanding it beyond the maximum RFA. Sourapas stated that to remain within the maximum RFA of 9,225 square feet "would severely limit [his] ability to modify the dwelling in ways to effectively overcome the design and technological limitations of the existing building." Without some evidence to support it, that claim is conclusory.

III. Declaratory Relief Regarding Zoning Variances and Adjustments

In addition to a writ of mandate, the Kottlers also sought declaratory relief to determine whether section 12.28 of the Los Angeles Municipal Code, which governs the granting of zoning adjustments, is contrary to the Los Angeles Charter and therefore invalid. The trial court denied declaratory relief in part on the ground that, because it granted the writ of administrative mandamus, there was no longer an actual controversy between the parties. The Kottlers contend that this was an abuse of discretion. We affirm the trial court's decision.

An action for declaratory relief is appropriate only "in cases of actual controversy relating to the legal rights and duties of the respective parties." (Code Civ. Proc., § 1060.) Even if there is an actual controversy between the parties, "it is within the trial court's discretion to grant or deny declaratory relief." (*Gilb v. Chiang* (2010) 186 Cal.App.4th 444, 458.) Indeed, "[t]he court may refuse to exercise the power [to grant declaratory relief] in any case where its declaration or determination is not necessary or proper at the time under all the circumstances." (Code Civ. Proc., § 1061.)

The Kottlers argue that their claim for declaratory relief was separate from their petition for administrative mandamus, and the ruling in their favor on the latter does not dispose of the entire dispute between the parties. That may be the case, but by granting a writ of administrative mandamus, the court effectively provided the Kottlers the relief they were seeking from Sourapas's proposed construction. Even assuming it would be in the interest of judicial economy to decide the validity of zoning adjustments in order to prevent similar cases from arising in the future (see *Venice Town Council, Inc. v. City of Los Angeles* (1996) 47 Cal.App.4th 1547, 1566), the court could reasonably conclude that it was not "necessary or proper at the time under all the circumstances" (Code Civ. Proc., § 1061) to grant declaratory relief that might have a significant impact on land use throughout the City.

IV. Attorney Fees

When the trial court ruled in favor of the Kottlers on their writ petition, it directed the Kottlers to prepare a proposed judgment. In their proposed judgment, the Kottlers included a statement noting that they "may move for an award of private attorney general fees against" Sourapas and the City pursuant to Code of Civil Procedure section 1021.5. The court issued the judgment as proposed by the Kottlers but struck out the statement about attorney fees. The court also struck out a statement that the Kottlers were entitled to an award of costs as the prevailing party. The Kottlers request that we direct the trial court either to modify the judgment to restore the language regarding attorney fees and costs, or to afford them an opportunity to prove their entitlement to attorney fees and costs.

The City counters, and we agree, that the question of attorney fees and costs is not properly before this court because the trial court has made no ruling on the subject. The trial court struck

the section on attorney fees and costs from the Kottlers' proposed judgment, but made no findings regarding whether the Kottlers are entitled to any such fees, nor who was entitled to costs as the prevailing party. Indeed, the parties agreed to a stipulated order whereby the Kottlers may file a motion for attorney fees after the completion of this appeal. (See *California Licensed Foresters Assn. v. State Bd. of Forestry* (1994) 30 Cal.App.4th 562, 565, fn. 1 ["An order awarding attorney fees is collateral to the main action and separately appealable."].) In the absence of an order denying them attorney fees or costs, there is nothing for us to review on this subject.

DISPOSITION

The trial court's order is affirmed. All parties to bear their own costs on appeal.

NOT TO BE PUBLISHED

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

BENDIX, J.